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AZ CORP COMMISSION
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GanzC@gtlaw.com*Attorneys for John W. Pacheco; Angela Pacheco; Financial American Corporation;
The Financial American Group, LLC; and American Apartment Fund XI, LP***BEFORE THE ARIZONA CORPORATION COMMISSION**

In the matter of:

JOHN W. PACHECO and ANGELA
PACHECO, husband and wife;BILL WALTERS and JACQUELYN
WALTERS, husband and wife;FINANCIAL AMERICAN
CORPORATION, a Nevada corporation;THE FINANCIAL AMERICAN GROUP,
LLC, a Delaware limited liability company;AMERICAN APARTMENT FUND XI, LP,
a Delaware limited partnership;

Respondents.

Docket No. S-20688A-09-0326

RESPONDENTS' ANSWER

Arizona Corporation Commission

DOCKETED

JUL 24 2009

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Respondents JOHN W. PACHECO; FINANCIAL AMERICAN CORPORATION; THE
FINANCIAL AMERICAN GROUP, LLC; and AMERICAN APARTMENT FUND XI, LP,
hereby submit their Answer to the *Notice of Opportunity for Hearing Regarding Proposed
Order to Cease and Desist, Order for Restitution, for Administrative Penalties and for Other
Affirmative Action* (the "Notice") filed by the Securities Divisions (the "Division") of the

1 Arizona Corporation Commission (the "ACC") on or about June 26, 2009. Respondents
2 respond to the numbered paragraphs of the Notice as follows:

3 **I.**

4 **JURISDICTION**

- 5 1. Respondents deny the allegations in paragraph 1 of the Notice.
6

7 **II.**

8 **RESPONDENTS**

- 9 2. Respondents admit the allegations in paragraph 2 of the Notice.
10 3. Respondents admit the allegations in paragraph 3 of the Notice.
11 4. Respondents admit the allegations in paragraph 4 of the Notice.
12 5. Respondents admit the allegations in paragraph 5 of the Notice.
13 6. Respondents admit the allegations in paragraph 6 of the Notice.
14 7. This paragraph requires no response.
15 8. Respondents admit the allegations in paragraph 8 of the Notice.
16 9. Respondents deny the allegations in paragraph 9 of the Notice.

17 **III.**

18 **FACTS**

- 19 10. Respondents admit the allegations in paragraph 10 of the Notice.
20 11. The allegations in paragraph 11 of the Notice contain an incomplete, inaccurate
21 and misleading statement of the facts, and are therefore denied.
22 12. The allegations in paragraph 12 of the Notice contain an incomplete, inaccurate
23 and misleading statement of the facts, and are therefore denied.
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1 13. The allegations in paragraph 13 of the Notice contain an incomplete, inaccurate
2 and misleading statement of the facts, and are therefore denied.

3 14. The allegations in paragraph 14 of the Notice contain an incomplete, inaccurate
4 and misleading statement of the facts, and are therefore denied.

5 15. The allegations in paragraph 15 of the Notice contain an incomplete, inaccurate
6 and misleading statement of the facts, and are therefore denied.

7 16. Respondents admit the allegations in paragraph 16 of the Notice.
8

9 17. The allegations in paragraph 17 of the Notice contain an incomplete, inaccurate
10 and misleading statement of the facts, and are therefore denied.

11 18. The allegations in paragraph 18 of the Notice contain an incomplete, inaccurate
12 and misleading statement of the facts, and are therefore denied.

13 19. The allegations in paragraph 19 of the Notice contain an incomplete, inaccurate
14 and misleading statement of the facts, and are therefore denied.

15 20. The allegations in paragraph 20 of the Notice contain an incomplete, inaccurate
16 and misleading statement of the facts, and are therefore denied.

17 21. The allegations in paragraph 21 of the Notice contain an incomplete, inaccurate
18 and misleading statement of the facts, and are therefore denied.

19 22. The allegations in paragraph 22 of the Notice contain an incomplete, inaccurate
20 and misleading statement of the facts, and are therefore denied.

21 23. The allegations in paragraph 23 of the Notice contain an incomplete, inaccurate
22 and misleading statement of the facts, and are therefore denied.
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IV.

**VIOLATION OF A.R.S. § 44-1841
(Offer or Sale of Unregistered Securities)**

24. Respondents deny the allegations in paragraph 24 of the Notice.
25. Respondents deny the allegations in paragraph 25 of the Notice
26. Respondents deny the allegations in paragraph 26 of the Notice.

V.

**VIOLATION OF A.R.S. § 44-1842
(Transactions by Unregistered Dealers or Salesmen)**

27. Respondents deny the allegations in paragraph 27 of the Notice.
28. Respondents deny the allegations in paragraph 28 of the Notice.

VI.

**VIOLATION OF A.R.S. § 44-1991
(Fraud in Connection with the Offer or Sale of Securities)**

29. The allegations in paragraph 29 and its subparts (a) - (d) of the Notice contain an incomplete, inaccurate and misleading statement of the facts, and are therefore denied.
30. Respondents deny the allegations in paragraph 30 of the Notice.
31. Respondents deny the allegations in paragraph 31 of the Notice.
32. Respondents deny each and every allegation not specifically admitted.

AFFIRMATIVE DEFENSES

The following affirmative defenses nullify any potential claims asserted by the Division.

Respondents reserve the right to amend this Answer to assert additional defenses after completion of discovery.

First Affirmative Defense

No violation of the Arizona Securities Act occurred because the Deal Point Memorandum at issue are not a security.

Second Affirmative Defense

Because the Deal Point Memorandum at issue are not a security, the Arizona Securities Division has no jurisdiction to bring this action and the action should be dismissed.

Third Affirmative Defense

The Notice fails to state a claim upon which relief can be granted.

Fourth Affirmative Defense

The Division has failed to plead fraud with reasonable particularity as required by Rule 9(b) of the Arizona Rules of Civil Procedure.

Fifth Affirmative Defense

Respondents did not know and in the exercise of reasonable care could not have known of any alleged untrue statements or material omissions as set forth in the Notice.

Sixth Affirmative Defense

Respondents did not act with the requisite scienter.

Seventh Affirmative Defense

Respondents did not employ a deceptive or manipulative device in connection with the purchase or sale of any security.

Eighth Affirmative Defense

Respondents did not violate A.R.S. § 44-1991.

Ninth Affirmative Defense

Individuals entering into the Deal Point Memorandum at issue suffered no injuries or damages as a result of Respondents' alleged acts.

Tenth Affirmative Defense

Individuals entering into the Deal Point Memorandum at issue approved and/or authorized and/or directed all of the transactions at issue.

Eleventh Affirmative Defense

If the Deal Point Memorandum at issue was a security it was exempt from registration and/or sold in an exempt transaction.

Twelfth Affirmative Defense

This proceeding before the Arizona Corporation Commission denies Respondents essential due process and is lacking in fundamental fairness. Respondents' constitutional rights will be further denied if they are not afforded trial by jury of this matter.

Thirteenth Affirmative Defense

The Division cannot meet the applicable standards for any of the relief it is seeking in the Notice.

Fourteenth Affirmative Defense

Respondents did not offer or sell securities within the meaning of the Arizona Securities Act.

Fifteenth Affirmative Defense

Respondents did not offer or sell or participate in the offer or sale of securities.

Sixteenth Affirmative Defense

Restitution is not an appropriate remedy.

Seventeenth Affirmative Defense

To the extent an award of restitution is appropriate, the Commission should use its discretion to reduce the amount, if any, Respondents must pay.

Eighteenth Affirmative Defense

Respondents allege such other affirmative defenses set forth in the Arizona Rules of Civil Procedure 8(c) as may be determined to be applicable during discovery.

RESPECTFULLY SUBMITTED this 24th day of July, 2009.

GREENBERG TRAURIG, LLP

By: _____

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Craig Solomon Ganz

Attorneys for John W. Pacheco; Angela Pacheco; Financial American Corporation; The Financial American Group, LLC; and American Apartment Fund XI, LP